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IN THE
Supreme Court of the United States

OCTOBER TERM, 1945.

No. 520.

ALLEN POPE, *Petitioner*,

v.

THE UNITED STATES, *Respondent*.

PETITIONER'S BRIEF IN REPLY.

Respondent's brief in opposition to the petition for writ of certiorari calls for brief reply.

THE QUESTION.

Respondent not only does not state (Respondent's brief, p. 2) the question now involved, but, on the contrary, evades it. It ignores what is the real question: Has the lower court correctly construed the Special Act here involved or complied with the Mandate of this Court following the decision (323 U. S. 1)?

It is petitioner's view that the Court of Claims has failed properly to interpret the Special Act (petition, pp. 2, 3) and that it has not understood or applied the Mandate of this Court.

THE ACT.

Section 2 of the Special Act of February 27, 1942, provides that the Court of Claims "is hereby directed to determine and render judgment at contract rates upon the claims of the said Allen Pope * * * for the work of excavating materials which caved in over the tunnel arch." This item of claim the Court of Claims has disallowed because it is stated that the contract involved in the original litigation fixes no "rate" for "excavating caved-in materials", but, on the contrary, provides that no payment shall be made for excavating materials from outside a prescribed ("B") line. It overlooks that the Special Act here involved as interpreted by this Court (323 U. S. 1) remedied that precise omission and provides, as a *new cause of action*, that the petitioner is to be paid at the contract rate for excavation for excavating caved-in materials. The work was done, the respondent had and has the full benefit thereof and the work has not been paid for. Surely this forms a sufficient background for the *moral* obligation to pay, changed into a *legal* obligation by the Act.

THIS COURT'S MANDATE.

This Court decided (323 U. S. 1) that the Act creates a new cause of action independent of any right existing at law under the original contract. The Court of Claims has failed to carry into effect what this Court thus decided. It has considered petitioner's claim on the basis of his *contract* right and not on the basis of his *right under the act* for payment for this excavation, except as it endeavors to find *meaningless* the language of the Act relating to excavation of caved-in materials. The lower court has thus ignored and not applied the plain intendment of the Mandate of this Court. It would appear to be in disregard of the well settled principles in such case as set out *In Re Potts*, 166 U. S. 263 under which, if for no other reason, petitioner is entitled to have the review now sought of the action of the lower court.

THE CASE IS REVIEWABLE.

1. Any case involving the proper construction of an Act of Congress would appear to be, necessarily, of general importance to the public at large.

2. This Court alone is the judge of what its own mandates mean. What such mandates mean is of importance not only to the petitioner but to the country at large.

3. The questions are novel. The Court of Claims first held (100 C. Cls. 375) that the language of the Act was plain and unambiguous in directing it to allow what it now disallows. It now holds, in effect, that the "plain" language of the Act was not intended to be used—that the Act does not mean what it seems to say.

This case involves such questions and is one of a character, therefore, that should be reviewed by this Court.

Respectfully submitted,

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